



United States Department of the Interior



BUREAU OF LAND MANAGEMENT

Elko District Office
3900 Idaho Street
Elko, Nevada 89801
<http://www.blm.gov/nv>

In Reply Refer To:
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DECISION RECORD

Three HMA Water/Bait Wild Horse Gather Plan and Environmental Assessment DOI-BLM-NV-E030-2012-0522-EA

INTRODUCTION

The Bureau of Land Management (BLM) Elko District, Wells Field Office (WFO) and Ely District, Egan Field Office (EFO) are proposing to conduct wild horse gathers using water/bait trapping over a five year period to remove localized groups of excess wild horses from within and outside of the boundaries of the Maverick-Medicine, Triple B HMAs and the Central portion of the Antelope Valley HMA beginning in 2013.

The Three HMA Water/Bait Gather Plan Preliminary Environmental Assessment (EA) **DOI-BLM-NV-E030-2012-0522-EA** (Three HMA Water/Bait Gather EA) was made available to the interested public on September 5, 2012 for a 30 day comment period. All comments were reviewed and considered prior to completion of the Final Three HMA Water/Bait EA. Several letters in support for and against the gather were received as well as numerous automatically generated form letters. These comments are summarized in Appendix 5 of the Final EA. Minor additions for clarity have been made to the EA; however substantial modifications were not required as a result of the comments received. The Final EA and associated documents can be viewed at:

http://www.blm.gov/nv/st/en/fo/elko_field_office/blm_information/nepa/3hma_water_trap_9.html

The Three HMA Gather area is located approximately 30 miles northwest of Ely, Nevada, and 70 miles southeast of Elko, Nevada, within White Pine and Elko Counties. The WFO is the lead office for preparation of the Three HMA Water/Bait Gather EA and planning for the gather itself.

The current estimated populations for the Three HMA gather area is 1,549 wild horses. The Appropriate Management Level (AML) range for the Three HMA gather area is 548-1,015 wild horses.

Table 1 below displays the Appropriate Management Levels (AMLs) for the Three HMA Gather Area.

Table 1. Summary of Wild Horse Population Information

HMA	AML	Current Population Estimate
Triple B	250-518	498
Maverick-Medicine	166-276	587
Western portion of Antelope Valley HMA	16-27	19
Central portion of Antelope Valley HMA	116-194	400 ¹
Total	518-1,085	1,504 ¹

¹ Wild horses were gathered and removed from the Antelope Valley HMA in October 2012 as a result of escalating drought conditions in the Antelope Valley HMA.

The AML is defined as the number of wild horses that can be sustained within a designated HMA which achieves and maintains a thriving natural ecological balance in keeping with the multiple-use management concept for the area. The AMLs for the Three HMA Gather Area were established through land use plans and final multiple use decisions following a public decision making process that provided opportunity for input and comment by members of the interested public. AMLs were established following the collection, analysis, and interpretation of monitoring data, which included precipitation, use pattern mapping, trend, production, census/inventory, and carrying capacity analysis.

The upper levels of AML established for the HMAs represent the maximum population for which a thriving natural ecological balance and multiple use relationship on the public lands can be maintained. The lower level represents the number of animals that should remain in the HMAs following a wild horse gather in order to allow for a periodic gather cycle. “Proper range management dictates removal of horses before the herd size causes damage to the range land. Thus, the optimum number of horses is somewhere below the number that would cause resource damage” (118 IBLA 75).

A portion of the Three HMA Gather Area was last gathered in October 2012, when a total of 45 wild horses were removed as a result of escalating conditions in the Antelope Valley HMA.

The BLM is proposing to implement the Proposed Action as detailed in the Three HMA Gather EA.

Proposed Action: The Proposed Action would be to gather and remove or relocate excess wild horses from selected sites using water or bait trapping or both. These sites would be selected based on resource monitoring that shows degradation of water and vegetative resources as a result of excess wild horse concentrations and use, or where wild horse health is at risk due to insufficient water and forage availability. The water or bait trapping activities could occur for up

to five years following approval of this action. Gathering of the excess wild horses utilizing bait/water trapping could occur at any time of the year and would continue until the target number of animals are removed from a given site to relieve concentrated use by wild horses in that area; and/or to remove animals residing outside HMA boundaries. Generally, bait/water trapping is most effective when a specific resource is limited, such as water during the summer months. For example, in some areas, a group of wild horses may congregate at a given watering site during the summer because few perennial water resources are available nearby. Under those circumstances, water trapping could be a useful means of reducing the number of wild horses at a given location, which can also relieve the resource pressure caused by too many wild horses. As the proposed bait and/or water trapping in this area is a low stress approach to gathering of wild horses, such trapping can continue into the foaling season without harming the mares or foals.

A BLM interdisciplinary team developed a Proposed Action Alternative and a No Action Alternative. Other considerations were not developed into alternatives and can be found on pages 12–18 of the 2011 Triple B, Maverick-Medicine and Antelope Valley Herd Management Areas Wild Horse Gather Plan EA and page 16–21 of the 2010 Antelope Complex Wild Horse Gather EA.

Based on the analysis of potential environmental impacts detailed in the Final Three HMA Gather EA, it was determined that the impacts associated with the Proposed Action were not significant. This was documented in the attached Finding of No Significant Impact (FONSI).

DECISION

It is the BLM's decision to implement the Proposed Action as described in the Final Three HMA EA (**DOI-BLM-NV-E030-2012-0522-EA**).

This Decision constitutes my final decision to gather and remove excess wild horses from within the Three HMA Gather Area and to remove wild horses from non-HMA areas to which wild horses from the Three HMA Gather Area have moved due to population pressures, and to manage the public lands within the gather area for a thriving natural ecological balance.

Water/bait trapping to remove wild horses from site specific areas would be conducted periodically over a 5 year period following the date of this decision based on available funding and National priorities. Pursuant to Title 43 of the Code of Federal Regulations (CFR) §4770.3(c), this decision is effective immediately.

RATIONALE:

As determined in the Three HMA Gather EA, it is necessary to gather and remove or relocate excess wild horses where they are causing adverse impacts to site specific riparian areas or other areas of resource concern (such as upland areas with limited forage) within the Three HMA Gather Area in order to restore a thriving natural ecological balance. The current population of 1,504 wild horses is 139% of the **AML's established through prior BLM decisions**. Analysis of ongoing monitoring data shows that wild horses are degrading rangeland health through heavy and severe utilization levels, trailing, trampling of riparian areas and increased erosion levels. Furthermore, the 2012-2013 drought has substantially reduced forage and water available to wild horses resulting in near emergency conditions, and

potential for wild horse suffering or death due to inadequate food and water, particularly in the low elevation winter range. The perennial key forage species exhibited little if any growth in 2012 and perennial grasses did not grow in many locations. Heavy and severe utilization levels due to an overpopulation of wild horses have further compounded the issue. This lack of precipitation and overgrazing by wild horses has greatly impacted winter range that wild horses use. With the coming spring and summer wild horses would be expected to continue to further impact the sites.

Throughout the HMAs plants continued to exhibit signs of drought stress. Very little if any growth occurred last year for a majority of plants, both herbaceous and shrub species. Many plants had undergone senescence by late 2012 and have yet to recover. Heavy to severe use by wild horses continues to impact upland sites within the Three HMA Gather Area.

Fall rain and winter snows have made little impact in the ongoing dry conditions. Plants throughout winter use areas continued to show signs of drought stress and impacts by over use by wild horses. This could prolong the time needed for the plants to recover and could lead to decreasing plant vigor and increase the susceptibility of non-native invasive plants encroaching and establishing throughout wild horse winter use areas in the HMAs.

In addition to degradation of rangeland and lack of forage, the wild horses are also competing heavily with native wildlife including pronghorn and mule deer, which also depend on these areas for forage this winter and beyond. The current population of wild horses is beyond the level determined to lead to a thriving natural ecological balance within the HMAs. Removal of excess wild horses is necessary in order to allow for drought recovery and upward trends in rangeland health, protect important wildlife habitat, ensure long term health and success of wild horses and prevent starvation and death of individual animals due to lack of forage and water.

In recent years, some members of the public have expressed opposition to the removal of wild horses from the range and have instead encouraged increased use of fertility control or other population controls to reduce herd growth rates, decrease gather frequency and ultimately reduce the number of excess animals that must be removed from the range through gathers. However, use of fertility or other population controls, without addressing the current over-population of wild horses, will not achieve rangeland health objectives or address the current escalating conditions with respect to insufficient forage and water resulting from drought conditions.

The gather is needed to reduce the wild horse impacts that have been documented to specific riparian and upland areas. The action would help reduce pressure on site specific riparian and upland areas rangeland resources, would protect those areas from the deterioration associated with the wild horse overpopulation, and would allow BLM to manage for a thriving natural ecological balance and multiple use relationship on public lands consistent with the provisions of Section 1333(a) of the Wild Free-Roaming Horses and Burros Act of 1971 (WFRHBA).

In summary, implementation of the Proposed Action detailed in the Three HMA Gather EA will:

- Conduct targeted removals of excess wild horses that are impacting site specific upland and riparian areas.

- Promote vegetative health by preventing over utilization and/or use by wild horses during critical growth periods for perennial grasses in site specific upland, wetland and stream bank riparian habitats associated with the Three HMA Gather Area.
- Remove excess wild horses that are residing outside of the Three HMA Gather Area in areas that are not designated for wild horse management.
- Trapping is a low stress and largely passive capture method that is not expected to have harmful effects to mares and/or foals.
- Water is a limited resource within the Three HMA Gather Area and becomes a limiting factor when wild horse populations exceed high range AML;
- Promote the improvement of wild horse habitat within the Three HMA Gather Area by allowing rangeland health to improve and by avoiding impacts from an overpopulation of wild horses, which will result in significant progress towards attainment of Standards for Rangeland Health and ensure healthy populations of wild horses for generations to come.

The following constitutes the rationale for issuing this decision effective upon issuance:

a) Potential impacts to wild horse health and emergency conditions

The population within the Three HMA Gather Area is 139% of the established **High end AMLs** and 274% of the established **Low end AMLs**, which is in excess of the AML range representing the number of wild horses which achieves and maintains a thriving natural ecological balance consistent with other multiple-uses. Monitoring data confirms that the current over-population of wild horses is adversely impacting rangeland resources and is in excess of the amount of forage and water necessary to maintain healthy herds. The Great Basin of Nevada is arid with precipitation levels in the valleys of 6-8", reaching 12-16" in the high elevations. Drought occurs an average of 4 of every 10 years which substantially reduces forage and water sources important for wild horses, wildlife and domestic livestock. Serious drought conditions were experienced throughout the United States in 2013. Throughout the Three HMA Gather Area drought is expected to persist or intensify according to the April 18, 2013 U.S. Seasonal Drought Outlook.

The Three HMA Gather Area has been experiencing severe and extreme drought with little to no growth of perennial grasses and shrubs this past year, and many drying water sources. Within portions of the Three HMA Gather Area, water sources are inherently limited. An overpopulation of wild horses compounded by severe drought that dried many springs has resulted in high concentrations of wild horses on the remaining waters, placing even greater pressure on these limited waters. Wild horses are travelling long distances over steep terrain to access remaining waters. In some locations, large numbers of wild horses stay at water sources waiting for the small source to recharge so that they can continue drinking, hesitant to leave even when approached by humans.

Forage in the low and mid elevations is also extremely limited and has endured heavy and severe utilization levels by wild horses. As a result, there is very little forage left in these areas to support the current over- population of wild horses through the spring and summer.

Failure to timely gather and remove excess wild horses would result in further declines in wild horse body condition, suffering and death due to starvation and lack of adequate nutritious forage for the existing population. Foals and mares would be most affected. Failure to proactively gather the wild horses would result in the need to either allow large numbers of animals to suffer and die, or to conduct an emergency wild horse gather of thin, weakened animals. Experience has shown that gathers involving animals in depleted health (thin, weak) can result in higher death loss of the wild horses during the gather as well as in short term holding facilities as their bodies are so badly malnourished that they are less able to acclimate to feed.

If serious enough, emergency gathers can result in the need to remove all wild horses due to their poor condition to save them from further suffering and death because no forage exists to support them. When conditions degrade this far, wildlife suffer as well, as forage needed for their survival has been consumed. Pronghorn, mule deer and other wildlife would likely experience death and poor reproduction. Impacts to the resources take many years to be reversed, and many areas could be damaged irreversibly by the time an emergency is declared. Allowing conditions to degrade to the point that there is a need for an emergency wild horse gather does not promote long term animal health or rangeland health and is not consistent with the WFRHBA, regulations or humane treatment mandates.

b) Necessity of Prompt Removal of Excess Wild Horses

The current population of approximately 1,504 wild horses exceeds the AML range established through prior planning level and Land Use Plan Decisions. Through analysis of monitoring and inventory data and other factors documented in the and Three HMA Gather EA, it has been determined that wild horses continue to impact upland and riparian areas within the Three HMA Gather Area and need to be removed in order to restore a thriving natural ecological balance, protect animal health and allow recovery from severe/extreme drought and to prevent further degradation and allow for recovery of rangeland health. The WFRHBA require the BLM to remove excess wild horses from the range. The CFRs, and other policy support the WFRHBA to remove excess wild horses from the range. To delay a gather would not be consistent with existing law, resource stewardship responsibilities or humane management of wild horses on the public lands.

c) Potential Damage to Rangeland and Riparian Resources.

The rangeland and riparian resources within the Three HMA Gather Area are detailed in the Final Three HMA Gather EA, the 2010 Antelope Complex EA and 2011 Triple B Complex Gather EA. Due to the inherent low precipitation levels, poorly developed soils and frequency of drought, native plant communities are easily degraded by overuse by grazing animals, especially during drought years.

Much of the habitat within the Three HMA Gather Area is characterized by a lack of key perennial grass species and in many cases key grass species that are important forage for wild horses are missing completely due to historical overuse. Many upland areas have been heavily impacted by wild horses and perennial herbaceous plants have undergone

senescence due to the ongoing drought. Riparian areas and springs within the Three HMA Gather Area have been heavily and severely utilized by wild horses, especially during 2012 when waters were extremely limited in some areas, increasing the use levels of remaining waters. Heavy and concentrated use by wild horses has degraded many of the riparian areas within the Three HMA Gather Area. Resource Advisory Council (RAC) Standards for Rangeland Health are not being met and wild horses have been identified as causal factors. Monitoring has documented heavy and severe use of forage by wild horses, trampling of riparian areas, and severe trailing to waters. Monitoring has indicated that as the population of wild horses has increased, so has the frequency and severity of documented impacts.

Substantial improvement will require many years to attain and will require proper management of grazing animals – including wild horses -- in these areas so that rangeland health continues to improve and improvements are not reversed. Changes to livestock management have been and will continue to be made following Rangeland Health Assessments and separate grazing decisions. Reducing wild horse populations by removing excess wild horses near site specific upland and riparian areas is essential in order to foster improvement of the rangeland health within the Three HMA Gather Area.

Completing the proposed gather will help reduce further degradation and reduce negative trends by eliminating heavy and severe use levels, reducing the severity of trailing, soil disturbance and hoof action. Delaying this gather would result in continued severe impacts to the upland and riparian resources through excessive utilization, trailing, and trampling, irreparably deteriorating the health of these sensitive desert ecosystems and precluding rangeland health improvements and recovery that could otherwise occur.

In accordance with 43 CFR § 4720.1, upon examination of current information, the BLM has determined that an excess of wild horses or burros exists, and that the excess animals should be immediately removed. I have also determined that immediate action is necessary to protect wild horse health, reduce rangeland degradation by an overpopulation of wild horses and to promote a thriving natural ecological balance as delaying a gather could result in current conditions evolving into an emergency situation that could lead to the death of individual animals.

PUBLIC INVOLVEMENT

The WFO mailed a scoping letter dated June 14, 2012 to individuals, agencies and organizations on the interested public list for the Three HMA Water/Bait Gather Area and issued a news release informing the public of the opportunity to submit comments, recommendations and alternatives for the completion of the Three HMA Water/Bait Gather EA. Comments received were considered in preparation of the Preliminary Three HMA Water/Bait Gather EA.

The Preliminary Three HMA Water/Bait Gather EA was made available to the public for a 30 day comment period on September 4, 2012. The Preliminary EA was also made available to the Nevada State Clearinghouse which made the notification letter and EA available for review by

over 50 different local, county, state, and federal agencies from around the state. The Preliminary EA was posted on the Elko District website and NEPA Register.

All comments were reviewed in preparation of the Final Three HMA Water/Bait Gather Area EA. These comments are summarized within Appendix 5 of the Final EA. The overwhelming majority of these comments were fashioned from a mass form letter from an animal welfare organization. These “form letters” yielded 10 distinct comments that were reviewed and considered. Comments ranged from questions seeking additional information or clarification to comments for or against the gather. Many comments were not specific to this Proposed Action but generally addressed the BLM’s wild horse and burro program. Some additions were made to the EA for clarification purposes; however, no substantial modifications were made to the EA as a result of the comments received. Most comments reviewed fell among but were not limited to the following themes:

Support the action/importance of maintaining AMLs
Inventory/animal numbers incorrect
Genetic health
AMLs should be increased
Insufficient Alternatives
Lack of Monitoring Data
Outside of scope of analysis
Viewpoint/matter of opinion
Concerns/effects of use of helicopters
Public viewing opportunities during gathers
Manage primarily for wild horses/remove or reduce livestock

AUTHORITY

The authority for this decision is contained in Section 1333(a) of the WFRHBA, Section 302 (a) and (b) of the Federal Land Policy and Management Act (FLPMA) of 1976, the Public Rangelands Improvement Act (PRIA) of 1978 (Pub. L. 95-514, Sec. 4) and at 43 CFR § 4700.

43 CFR § 4700.0-6 Policy

- (a) Wild horses and burros shall be managed as self-sustaining populations of healthy animals in balance with other uses and the productive capacity of their habitat;
- (b) Wild horses and burros shall be considered comparably with other resource values in the formulation of land use plans;
- (c) Management activities affecting wild horses and burros shall be undertaken with the goal of maintaining free-roaming behavior;
- (d) In administering these regulations, the authorized officer shall consult with Federal and State wildlife agencies and all other affected interests, to involve them in planning for and management of wild horses and burros on the public lands.

43 CFR § 4710.4 Constraints on Management

Management of wild horses and burros shall be undertaken with the objective of limiting the animals' distribution to herd areas. Management shall be at the minimum level necessary to attain the objectives identified in approved land use plans and herd management area plans.

43 CFR § 4720.1 Removal of excess animals from public lands

Upon examination of current information and a determination by the authorized officer that an excess of wild horses or burros exists, the authorized officer shall remove the excess animals immediately in the following order.

- (a) Old, sick, or lame animals shall be destroyed in accordance with subpart 4730 of this title; (b) Additional excess animals for which an adoption demand by qualified individuals exists shall be humanely captured and made available for private maintenance in accordance with subpart 4750 of this title; and
- (c) Remaining excess animals for which no adoption demand by qualified individuals exists shall be destroyed in accordance with subpart 4730 of this part¹

43 CFR § 4740.1 Use of motor vehicles or aircraft

- (a) Motor vehicles and aircraft may be used by the authorized officer in all phases of the administration of the Act, except that no motor vehicle or aircraft, other than helicopters, shall be used for the purpose of herding or chasing wild horses and burros for capture or destruction. All such use shall be conducted in a humane manner.
- (b) Before using helicopters or motor vehicles in the management of wild horses and burros, the authorized officer shall conduct a public hearing in the area where such use is to be made.

43 CFR § 4770.3 Administrative Remedies

- (a) Any person who is adversely affected by a decision of the authorized officer in the administration of these regulations may file an appeal. Appeals and petitions for stay of a decision of the authorized officer must be filed within 30 days of receipt of the decision in accordance with 43 CFR, part 4.
- (c) Notwithstanding the provisions of paragraph (a) of §4.21 of this title, the authorized officer may provide that decisions to remove wild horses or burros from public or private lands in situations where removal is required by applicable law or is necessary to preserve or maintain a thriving natural ecological balance and multiple use relationship shall be effective upon issuance or on a date established in the decision.

43 USC Sec. 1901(4):

Continue the policy of protecting wild free-roaming horses and burros from capture, branding, harassment, or death, while at the same time facilitating the removal and

1. The Bureau of Land Management is currently not implementing this portion of the CFRs. Future decisions regarding this option would not occur before public involvement and comment. Healthy wild horses that are not adopted are transported to long term holding pastures or are sold (with limitations) to private individuals, but are not sold to slaughter nor euthanized.

disposal of excess wild free-roaming horses and burros which pose a threat to themselves and their habitat and to other rangeland values.

42 USC Sec. 1732(b):

In managing the public lands the Secretary shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the lands.

APPEAL PROVISIONS

Within 30 days of receipt of this wild horse decision, you have the right to appeal to the Interior Board of Land Appeals, Office of the Secretary, in accordance with regulations at 43 CFR Part 4. If an appeal is taken, you must follow the procedures outlined in, “[Information on Taking Appeals to the Interior Board of Land Appeals](#).” Please also provide this office with a copy of your Statement of Reasons. An appeal should be in writing and specify the reasons, clearly and concisely, as to why you think the decision is in error.

In addition, within 30 days of receipt of this decision you have a right to file a petition for a stay (suspension) of the decision together with your appeal in accordance with the regulations at 43 CFR § 4.21. The petition must be served upon the same parties identified in items 2, 3, and 4 of form 1842-1 titled “[Information on Taking Appeals to the Interior Board of Land Appeals](#).” The appellant has the burden of proof to demonstrate that a stay should be granted.

A petition for a stay of the decision pending appeal shall show sufficient justification based on the following standards:

- 1) The relative harm to the parties if the stay is granted or denied;
- 2) The likelihood of the appellant’s success on the merits;
- 3) The likelihood of immediate and irreparable harm if the stay is not granted; and
- 4) Whether the public interest favors granting the stay.

At the conclusion of any document that a party must serve, the party or its representative must sign a written statement certifying that service has been or will be made in accordance with the applicable rules and specifying the date and manner of such service (43 CFR § 4.401 (c) (2)).

APPROVAL

The Three HMA Water/Bait wild horse gather is approved for implementation on or about June 13, 2013. This decision is effective upon issuance in accordance with 43 CFR § 4770.3 (c) because removal of excess wild horses is necessary to protect animal health and prevent further deterioration of rangeland resources. This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with 43 CFR part 4 (CFR Part 4, Subpart B).

Sincerely,

//s//

5/13/13

Bryan K. Fuell
Manager,
Wells Field Office

Date

//s//

5/13/13

Jill A. Moore
Manager,
Egan Field Office

Date